



SENATE LOCAL GOVERNMENT /
EXHIBIT NO. 1
DATE 1-14-2013
BILL NO. 23



Montana Association of Planners
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January 7, 2013

Local Government Committee
Montana Senate
Chair Senator Edward Buttrey
1301 East 6th Avenue
Helena, MT 59601

Dear Senator Edward Buttrey and Members of the Local Government Committee:

The Montana Association of Planners (MAP) is Montana's only state-wide organization of professional planners. With membership representing both the public and private sectors across the State, we strive to achieve a sound professional, objective approach to land use and community development issues.

MAP is providing this letter and information to you and your committee to introduce ourselves and to let you know that we can provide technically-based and experience-backed information on any discussion regarding land use or community development that may come before your Committee and the Legislature in 2013. This notebook contains an introductory statement from MAP and five Policy Statements on the cornerstone issues of land use planning and community development in Montana:

- Montana Growth Policy Laws
- Montana Subdivision Laws
- Montana Zoning Laws
- Montana Tax Increment Financing Laws
- Montana Annexation Laws

These statements should provide background for you on the core issues Montanans rely on for sound community planning and introduce you to the information and background MAP will provide to you during the Session. Montana is a diverse state, with great variation in its communities from rural to urban.....from tiny towns to large cities. MAP brings land use planning experience from all corners of our great state and looks forward to serving you during the 2013 Legislative Session.

Sincerely,

A handwritten signature in purple ink that reads "Wyeth Friday".

Wyeth Friday, MAP President
Billings

MONTANA ASSOCIATION OF PLANNERS

Legislative Committee 2012 Legislative Session

Summary comments regarding: SB 23 "An Act revision county interim zoning requirements and procedures...."

Senate Local Government Committee; January 14, 2013

Counties must have a means of dealing with unanticipated events that are not in the best interests of public safety, health and welfare and which may only be addressed through zoning. This authority is already in place in 76-2-206, MCA. As professional planners serving the state of Montana, we are not aware of widespread issues across the state regarding the law as it stands now. We encourage Montana law-makers to not alter the law to address an isolated issue or unique situation.

- Many Montana towns and counties have minimal levels of professional staffing, or none at all, for their planning functions. This makes it extremely difficult or even impossible for these local governments to stay abreast of policies, programs, and regulations that could be used to manage growth-related issues. These same towns and counties also tend to have minimal infrastructure and service delivery systems. Therefore, when unanticipated growth or development occurs, emergency situations in water, sewer, roads, schools, law enforcement, and emergency services can---and do---follow. And when this happens, many Montana local governments have used the interim zoning district provision of the MCA to work with service providers, developers, and the community at large to solve service, sanitation, and infrastructure problems **before** they become serious threats to the public health, safety, and general welfare.
- If the interim zoning provisions are rendered unusable by amendments to the existing legislation that enable local governments to respond to service and infrastructure emergencies, Montana citizens will lose a valuable tool that allows them to have a say as to when and how tax dollars are spent on growth related issues and challenges.
- **MAP is concerned that requiring "a study or investigation" to "verify" an emergency is a waste of valuable time and resources that are better utilized to avoid or mitigate the emergency itself.** In MAP's experience of county, city and town planners across the State, local governments do not propose interim zoning districts and/or regulations without VERY careful consideration. When a community is confronted with an emergency, it needs adequate discretion to identify and deal with the situation.
- The 30-day time limit to initiate the "study or investigation" is entirely too short. If consultant assistance is needed (which it probably will given the high standard proof of an emergency that this bill imposes), it is impossible to write and publish an RFP, choose a consultant, and execute a contract all within 30 days.

- Reducing the amount of time for which an interim district or regulation may be enacted from one year to 182 days is unacceptable. Should a sanitation investigation, growth policy, zoning code, permit system, neighborhood plan, etc. be required to address the emergency, none of these things can be reasonably and fairly produced and adopted, with meaningful community involvement, in six months. The process of providing public participation is essential to land use planning in Montana and is something communities in the state pride themselves on for inclusionary decision making.
- The added requirement for the public notice, "including how those uses and related matters that must be regulated to mitigate the emergency will be classified and regulated" is onerous, excessive, and unreasonable. In order to provide such detail, the local government would basically have to have the emergency solved in order to publish a notice!
- We find no justification to require an extraordinary majority of the board of county commissioners to extend an interim measure or district. Many counties have only 3 commissioners and a vote of 2 out of 3 is already needed to pass a motion. The requirement for unanimous approval of commissions with three members to extend interim zoning beyond the 182 days would affect 53 of Montana's 56 counties. There is no comparable unanimous requirement for municipalities when the vote to extend interim zoning. The comparable municipal requirement is 2/3 vote. In the assessment of MAP, current provisions of the MCA that allow for interim zoning districts or regulations work well, serve a legitimate and necessary purpose, and have not been abused by local government in Montana. We urge members of the Senate Local Government Committee to reject SB 23.



2013 Legislative Session

Organizational Statement

The Montana Association of Planners (MAP) is Montana's only state-wide organization of professional planners. With membership representing both the public and private sectors, we strive to achieve a sound professional, objective approach to land use and community development issues. MAP works to provide solid, experience-backed information to any discussion regarding amendments to any portion of the Montana Code Annotated that deals with land use or community development, and works with citizens and land owners to inform these discussions.

We support long range planning that lays the foundation for logical, efficient, and fiscally sustainable land use and community development. Community long-range planning efforts are embodied in growth policies, which provide an overall comprehensive vision for future development, and can call for more specific plans that address capital improvements, transportation, parks, downtown revitalization, and neighborhoods. Implementation of long-range plans takes place in a variety of ways, including the building of infrastructure, and provision of land use policies and regulations such as annexation criteria, zoning codes, and subdivision standards. These policies and regulations, adopted through highly inclusionary and participatory public processes that tie them to long-range planning, promote decisions based on objective standards and reduce the potential for disjointed, arbitrary, and ad hoc decision-making.

Montana is a diverse state, with great variation in its communities from rural to urban.....from tiny towns to large cities. All of these communities have evolved as reflections of their economies, local geography, and the culture and values of their respective citizenry. As these communities were built, many different approaches to physical organization were used to address local circumstances, issues, and concerns. Because of this high degree of complexity and local diversity, questions of land use and community development are best addressed at the city and county level, within the broader parameters of state law and the context of best practices for land use planning and management.

MAP supports careful analysis at the state-wide level anytime amendments to subdivision, zoning, annexation, or growth policy statutes are proposed, so that isolated incidents in one community do not drive wholesale amendments to the law that may not be needed, or may actually do harm, in other communities. And while laws will always change as society evolves, amendments to state laws governing land development should be carefully and comprehensively thought out so that they do not

create inconsistency, ambiguity, and uncertainty for administrators, land owners, and the general public.

In summary, MAP:

- ✓ Works to provide sound professional, objective approaches to land use and community development
- ✓ Supports long-range planning as the foundation for local government land use policies and regulations
- ✓ Supports broad, inclusionary public processes in government decision-making
- ✓ Believes in local flexibility to plan and manage growth and development within the broader parameters of state law
- ✓ Urges careful and comprehensive analysis prior to amending Montana's state land use and community development laws, and consideration of the effects on local government and associated costs to the public



2013 Legislative Session Policy Statement

Montana Growth Policy Laws

Background: The Growth Policy is the fundamental planning document for local communities, providing the present and future context for growth and development. Its purpose is to create a community vision with respect to how we use our land. Its goals, objectives, and strategies reflect the natural setting, population, housing and economic patterns as well as the unique character and quality of life that provides a sense of place.

The Growth Policy is not a regulatory document but provides a framework and rationale for the regulations, programs and initiatives that communities undertake in order to realize the goals and objectives set forth in the Policy. The Policy reflects wide ranging public participation as well as careful research of current conditions and trends.

Current statutes allow for each local government with a planning board to prepare a growth policy and provide a list of elements to be addressed in the document. The extent to which each is addressed, however, is determined at the local level. In recent years, the list of required elements has been expanded to include additional items of critical concern, including sand and gravel resources and an evaluation of wildfire potential. These additions have enabled Montana communities to better anticipate challenges and issues associated with community development.

MAP believes that the current list of required elements is adequate to formulate good land use policies, as well as address associated areas of concern including housing and economic development. The statutes also do not restrict the inclusion of additional elements that may be of local concern. The statutes do require regular monitoring and updating to keep growth policies relevant and effective.

Position: MAP does not believe that additional requirements and/or other changes to the Montana Growth Policy Statute (Montana Code Annotated 76-1-601 through 606) are warranted at this time and such changes would present an undue burden to local governments, particularly as they struggle with shrinking budgets and increasing demands on infrastructure and services.



2013 Legislative Session Policy Statement

Montana Subdivision Laws

Background: Montana's subdivision law enables and requires local governments to regulate subdivisions. This is the only planning statute in Montana that requires state-wide participation. As such, this is the primary tool used by local governments to self-direct their future by managing development.

The Montana Subdivision and Platting Act (MSPA) (Montana Code Annotated 76-3) has been revised, sometimes quite dramatically, in every legislative session over the past 12 years. Every legislative revision results in an unfunded mandate requiring the staff of local governments to implement these new or amended provisions. Sometimes these changes do improve the subdivision and platting process for all stakeholders. In other cases, these amendments may make needed changes in one community but prove to be counterproductive elsewhere, making the standardized approach inconsistent relative to the costs and benefits. In these difficult economic times the costs associated with amending the subdivision regulations are significant at all levels of local government and severe in rural areas who have reduced staff and budget.

Position: MAP continues to look to its membership, elected officials, and other land use professionals across Montana for ideas that might improve the MSPA for all of our citizens. MAP supports careful analysis at the state level anytime MSPA amendments are contemplated so that isolated incidents do not drive wholesale MSPA amendments that may not be needed in other communities. Continual changes to the regulations create inconsistency for administrators, land owners, and the general public. MAP strives to provide solid, experience-backed information to any discussion regarding amendments to MSPA and works with citizens and land owners to help inform the discussion.

Legislative Recommendations Regarding Subdivision for Rent or Lease (SRL): MAP supports preservation of the existing enabling language of the MSPA with one specific exception – Clarification is needed of 76-3-202, 204 and 208 – which exempts one or more parts of a building, structure or other improvement for sale, rent or lease (SRL). These sections of State Law have been re-interpreted in a January 2012 Attorney General Opinion.

MAP supports limited modification of State Law to provide clearer and more streamlined regulations of SRL with the following approach:

- ✓ Generally, clarify the existing law while continuing to allow local review through MSPA rather than set up new review processes or regulatory mechanisms outside of MSPA.
- ✓ Better Define what SRL is and is not.
- ✓ Exempt SRL reviews in zoned areas if the development complies with zoning.



2013 Legislative Session Policy Statement

Montana Zoning Laws

Background: Montana is a diverse state with great variation in communities from rural and urban. These communities have evolved to meet the needs of diverse economic bases, local geography and local preferences. As these communities were built, many different approaches to physical organization were used to address the local circumstances and concerns. Because of this great degree of complexity and local diversity, questions of land use and community development are best handled at the city and county level.

Zoning is a tool that many Montana communities have chosen to use to help them address the complexities of land development. Local government zoning is authorized through Title 76 Chapter 2 Parts 1-3. A number of changes to these parts were made in the 2011 Session. The choice to use zoning in addressing community needs is left to each community to decide for itself. The authorizing statutes provide local government the necessary flexibility in establishing standards and procedures that are relevant to their community.

Specific purposes for the use of zoning are established in the authorizing statutes. The purposes focus on avoiding injury to others, ensuring adequate public facilities, and protecting the investments made in real property. These purposes match with the old saying of "An ounce of prevention is worth a pound of cure." Avoiding problems before they occur is most cost effective for both public and private parties. The purposes of zoning also correspond with the statement in Article II, Section 3 of the Montana Constitution that the enjoyment of rights brings with it responsibilities.

Real property is often the largest investment and asset of Montanans. The development and use of land affects adjoining properties as well as entire neighborhoods. The public process required to adopt and administer zoning standards provides a forum to discuss the benefits and impacts of development, and how any impacts can be effectively mitigated. As local elected officials are intimately familiar with their communities, they can work with their citizens to adopt standards that are reflective of local needs, concerns, and priorities. Once adopted, zoning regulations can be modified to match changing local priorities and to help implement an adopted Growth Policy.

Well structured and administered zoning regulations provide predictability to sellers, purchasers, and developers of property, as well as their neighbors. Good regulations support fairness by establishing clear standards that apply equally to all. Zoning that is

predictable, fair, and locally relevant provides a stable framework within which private initiative and entrepreneurship can thrive.

Position: MAP supports the ability of local communities to use zoning to address local growth and development issues. MAP encourages careful consideration of any amendments to state zoning enabling legislation to weigh the potential impacts of amendments on all communities across the state.

Legislative Direction: Recent judicial decisions are expected to prompt legislation that would modify the protest provisions found in MCA 76-2-200, et. seq. These protest provisions impact zoning in what are typically referred to as "Part 2" zoning districts, which can be initiated by a group of property owners or a County. The current protest provisions give the protest of owners of some property types (e.g., forested or agricultural lands) a greater weight in the protest process than others. MAP would support the amendment of Part 2 zoning to allow for a protest provision that treats all property owners equitably while allowing the Board of County Commissioners to override the protest with a supermajority vote, similar to what is found in MCA 76-2-305.

MAP supports the ability of Counties to establish zoning through an inclusive community process. The ability to establish zoning in an open and equitable way could help start to shift the regulation of land use to zoning, where it is appropriate. Currently, too many counties use subdivision review to regulate land use and this has created problems in the Subdivision and Platting Act since subdivision is not the appropriate method to regulate land use.



2013 Legislative Session Policy Statement

Tax Increment Financing

Background: Tax increment financing (TIF) is a state authorized, locally driven funding mechanism that allows cities and counties to direct property tax dollars that accrue from new development, within a specifically designated district, to community and economic development activities. In Montana, TIF districts are authorized in parts 7-15-4201 and 4301, et. Seq. Montana Code Annotated (MCA), the State's Urban Renewal Law. Proposed TIF districts are typically characterized by blight and/or infrastructure deficiencies that limit new investment. A base year is established from which "incremental" increases in property values are measured. Virtually all of the resulting new property tax dollars (with the exception of the six mill state-wide university levy) can be directed to redevelopment and economic revitalization activities within the area in which they are generated. Tax payers located within a TIF district pay the same amount as they would if the property were located outside the district. TIF does not increase property taxes. Rather, it only affects the way that taxes, once collected, are distributed.

Position: MAP supports TIF Districts for the following reasons:

- ✓ The creation of a TIF district fosters thoughtful land use planning. The enabling statutes specifically indicate that TIF districts must be found to be in accordance with a jurisdiction's Growth Policy and associated zoning regulations. TIF funds are used to make infrastructure improvements that benefit the public and allow for orderly growth.
- ✓ Funds generated from TIF districts can be used directly for projects and to leverage state and federal grants. This is particularly important to smaller communities, which often face significant challenges in finding matching funds.
- ✓ Taxpayers within a TIF district pay no additional taxes as a result of their inclusion in the district.
- ✓ TIF is one of the few mechanisms that local governments have to encourage investment and to diversify tax base. As communities lose jobs and tax base, they are forced to eliminate services, close schools and cut jobs. TIF provides an opportunity to "turn the tide" of decline.
- ✓ Over the long run, TIF Districts result in increased tax revenue for all taxing jurisdictions. To date, more than \$10.5 million dollars in taxable value has been added to the state's tax base as districts have sunsetted. This amount will increase to \$22.2 million by 2018.

Special Notes:

TIF and School Funding

As financial resources for schools diminish, it is easy to look for quick fixes to resolve the problem. In previous Legislative sessions, the elimination, from the TIF calculation, of the 95 mills that the State levies for education has been proposed. This approach, however, misses some critical points. Certainly if development continues to be stymied, there would be no new taxable value to generate new tax revenue. Further, in Montana, school districts are funded based upon enrollment numbers, which are used to determine the amount of funding each school district will receive from the state and ultimately how much school districts will be allowed to budget in their general funds for the school year. The best way for a district to increase its student enrollment is for the community in which it is located to increase the job opportunities available. Often new economic activity within a TIF district results in growth throughout the community. Certainly, when a district sunsets, all taxing jurisdictions, including the school will realize the benefit of a larger and more diversified tax base.

Opportunities in Eastern Montana

As the Bakken Boom grows in Eastern Montana, communities are faced with increasing demands on local infrastructure. TIF may provide a way for cities and counties to make use of new property tax dollars associated with economic growth, in order to provide sustainable public services. A review of how and where growth is occurring in those counties affected by oil development will likely yield information about whether changes to the TIF law may be required to make use of this tool to address critical needs.



2013 Legislative Session Policy Statement

Montana Annexation Laws

Background: The Montana Association of Planners (MAP) believes that effective annexation and land use regulations are necessary to ensure the long-term economic sustainability of Montana municipalities, allowing them to manage expansion of their service areas, maximize cost efficiencies in delivering public services, and protect Montana's environmental and natural resources.

Annexation may be appropriate or encouraged when there is a need or demand for municipal services in fringe areas, and when those services can best be supplied by the municipality. However, municipalities need to maintain the authority to decide annexation of outlying areas to make sure they can adequately provide the services without negatively impacting existing municipal residents. It is also easier for municipalities to support annexation when rural and suburban development on the fringe is already built to urban standards. Parks, streets, utilities, and other facilities that are already built to an urban standard make it easier for municipalities to support annexation and deliver services to newly annexed property.

For municipalities to provide efficient urban services, they also need to guide development in an orderly manner and avoid the extension of services to distant and scattered "pockets" of development. Clear authority for annexation guarantees a measure of responsible control while also allowing the annexation process to be fair to municipal and county residents.

Position: MAP supports the annexation laws as currently written in MCA 7-2-42 through 7-2-47 and would discourage changes in legislation negatively impacting the ability of Montana's municipalities to effectively manage services and annex property when it is appropriate.